

Citizens Seek Moratorium to Battle 'Pier Pressure'

By SUSANNA SHEEHAN

The proliferation of piers along Duxbury Bay has some residents so concerned that they want the March's Annual Town Meeting to ban any new piers until the issue can be studied.

Bill Tenhoor and John Hagerty, both of Water St., explained to selectmen last week that their two town meeting warrant articles that would place a moratorium on all new piers for one year and create a study committee to review pier

regulations and report its findings and recommendations to next year's town meeting. They submitted the articles by citizen's petition. The annual town meeting is Saturday, March 9.

Tenhoor said he and Hagerty, who with others have formed the Bay Preservation Committee, were originally concerned about the impact a pier at 245 Washington St. would have on the Water St. public landing. However, since

then, they researched the issue of piers and found the number of permits for piers has been on the increase. In 2001, there were 17 requests for piers and 11 were approved, according to their report.

This increase is a cause for concern, said Tenhoor, because piers set up a conflict between individual and public rights to the waterfront and because they also can jeopardize public

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safety.

"Looking at the pier issue, we believe it is an issue of rights," said Hagerty.

Waterfront property owners have the right to apply for special permits for piers, however town citizens have the right to use the shoreline between mean low and mean high tide to "fish, fowl and navigate."

In Massachusetts, the property lines of many waterfront homes reach out to the low water mark in front of their upland areas. Under state law, if the public wants to travel in front of a private property with deeded beach rights, then the public may only use the intertidal area — the space between mean high and low water — and only for fishing, fowling (i.e. duck hunting) or navigating. Walking is not included in the law's language. The purpose of this 1647 law was to

protect the rights of seaside property owners and encourage them to build docks to enhance ocean commerce. However, this law also provided access for the public whose existence depended upon the ocean for transportation, for fish and shellfish, and for sea hay for livestock fodder. This law has been challenged and upheld in court many times in its long history.

Building piers that jut out into the intertidal area, especially near town landings, interfere with the public's right to use the bay, said Hagerty. "Piers constrict public access to 'fish, fowl, and navigate,' are safety hazards, and impede recreational use of landings," he said.

Tenhoor said piers violate the goals of the town's Comprehensive Plan because they diminish the recreational use of the bay for all residents. One of the Comprehensive Plan's goals is to "provide and enhance recreational facilities for all residents." Piers near beaches can create safety haz-

ards for swimmers, he said. They can also cause problems for boaters during storms or times of limited visibility.

Tenhor and Hagerty are especially worried about the number of new piers being proposed for adjacent properties along the Washington St. shore. They feel that as one homeowner applies for a pier, an abutting homeowner will want one, too. It is a case of "pier pressure," they said. "A pier begetting a pier."

In the Eagles Nest area of the bay, Tenhor said there are eight piers with one more in the permit process. Several of these are on abutting properties. One owner has two piers over his land, Tenhor said.

Tenhor and Hagerty feel that by placing a ban on new piers and appointing a study committee, the town as a whole can benefit. The study committee would review the existing Conservation Commission

regulations governing piers in order to make them more specific. For example, the Conservation Commission's regulations now state that a project may not "significantly destroy a public view or degrade aesthetic value." According to Tenhor, the town of Barnstable, in comparison, has a pier and dock overlay district with regulations that call for "protecting and maintaining the natural open character and scenic vistas of the seacoast and water."

The committee would review the experience of other bay towns and then develop and recommend guidelines for pier construction that work for Duxbury and that are consistent with the goals of the Comprehensive Plan, Tenhor said. One idea is to have neighborhood piers that many property owners could share. There is currently one pier off Washington St. that three families use together.

Tenhor and Hagerty asked selectmen for their support. Selectmen Chairman Andre

Martecchini was in favor of the idea.

"I support this in concept," said Martecchini. "You have to have a moratorium to achieve something."

However, he felt the language in the town meeting warrant articles submitted by Tenhor and Hagerty may need to be reworked to make sure it's the best way to accomplish their goals and to make sure it's legal. "It has to be air tight" said Martecchini. He suggested Duxbury's town counsel review the proposed articles.

Selectmen wondered how this idea fit in with the board's goal of appointing a committee to create a Bay Wide Management Plan. Tenhor said that a committee should study the issue of piers separately from a bay wide plan but that, ultimately, the information obtained would fit into a larger report on the waterfront.